IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO. 351 OF 2007

Anish Yakub Khan. ... Applicant.

V/s.

The State of Maharashtra. ... Respondent.

H.H.Ponda for the applicant.

K.V.Saste, APP for the State.

CORAM: V.C.DAGA, J.

DATED: 16th August 2007.

P.C.:

. Heard learned counsel for the applicant and learned A.P.P. for the State.

. Perused revision application.

2. This revision application is directed against the order dated 16th July, 2007 passed by the Ad-hoc Third Additional Sessions Judge, Bombay at Sewree in Misc. Application No.62/2005 in Sessions Case No.471/2004, whereby the learned Sessions Judge rejected the said application under section 227 of Code of Criminal Procedure, 1972 taken out by the applicant claiming discharge from prosecution.

3. The factual matrix depicted in the impugned

order needs no repetition.

Submissions :

4. The learned counsel appearing for the applicant took me through the statements of Mansoor Mohamed Rabool Shaikh; Sameer Shaikh Usman Shaikh; and Yakub Mehboob Khan to show that the applicant was assaulted by the deceased and that he did not play any role in commission of offence. He went on to urge that looking to his involvement, neither any charge can be framed against him nor he can be prosecuted. He, thus, submits that the impugned order is liable to be quashed and set aside and the applicant is liable to be discharged.

5. Per contra, learned A.P.P., appearing for the State, took me through the statement of Sajid Abdul Sattar Khan who has stated that Amin Khan; Farukh; and Abdul Rehman in the company of Shakeel had engaged in hot altercation with Gafar Chikna and during the course of hot exchange of words he saw that three persons, namely, Amin Khan (applicant); Farukh; Shakeel had caught hold of the deceased and Abdul Rehman hit on the head of the deceased by spade and, thereafter, they ran away from the spot of incident. He, thus, submits that all these four persons were responsible for the death of the deceased.

6. Learned A.P.P. also took me through the

statement of Javed Ibrahim Shaikh, who has stated that the deceased was last seen in the company of Gafar and Anis.

7. Learned A.P.P. has also invited my attention to the statements of Abdul Ali Salam Shaikh and Shakeel Ahmed Abdul Talib to show the prima facie; involvement of the present applicant in the commission of the offence. He, thus, submits that there is prima facie sufficient material to connect the applicant with the offence alleged.

8. Learned A.P.P. further submits that the material placed on record discloses grave suspicion against the accused, as such it is not a case for discharge of the applicant at this stage. He further submits that at this stage the Court is only expected to see whether or not there is sufficient evidence for framing charge and not whether there is any sufficient evidence for eviction for conviction. He, thus, submits that if there is some evidence on which the conviction may reasonably be possible, the charge can be framed.

9. With the aforesaid submission he took me through the impugned order and urged that this is not the case wherein the Court should interfere with the impugned order at this stage. He further submits that the view taken by the Court below is a reasonable and possible view and can be sustained on the material available on record.

Consideration :

10. Having heard rival parties, having seen the statements of the different witnesses together with the material available on record in the light of the findings recorded in the impugned order, statements of the witnesses, prima facie; go to show the involvement of the applicant- accused. He was in company of the deceased when the incident occurred. The statements of the witnesses are sufficient to establish prima facie involvement of the present applicant- accused in commission of the offence. In the aforesaid view of the matter, no case is made out to interfere with the impugned order.

. In the result, revision application is rejected in limine with no order as to costs.

JUDGE